IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.Cr. Revision No. 550/2000
(Anil Kumar Vs. Smt. Chandra Devi & Ors.)

Date of order : 07/07/2006

P R E S E N T

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Haider Agha for the petitioner.
None present for the non-petitioners though served.

BY THE COURT :-

This revision petition is directed against the order dated 07.4.2000 passed by Judge, Family Court, Jodhpur (for short 'the family court' hereinafter) in Criminal Case No. 130/95 whereby the family court allowed the application filed by the non-petitioner, her son and daughter and granted maintenance at the rate of Rs. 400/- per month in favour of non-petitioner No.1 and at the rate of Rs. 300/- per month each in favour of non-petitioners No.2 and 3 Kumari Shital and master Pawan both minor son and daughter of the petitioner and non-petitioner No.1. Aggrieved by the order impugned, the petitioner has filed the instant revision petition.

I have heard learned counsel for the petitioner. Perused the order impugned as also record of the family court.

It is admitted fact that in the year 1981, the petitioner married to non-petitioner No.1 according to Hindu rites. Out of the wedlock, there are four issues, two of them are with the petitioner and two with the non-petitioner wife. In the petition under Section 125 Cr.P.C., the non-petitioner No.1 alleged that the petitioner her husband used to assault her and demanding money from her father. She has given various dates on which the money was demanded by the petitioner. She further stated that while she was pregnant she was turned out of the matrimonial home and she went to her parent's house and started living there. Thereafter, her mother-in-law came and took two of her issues namely Sonu and Monu and since then they are with the petitioner. However, she gave a birth to non-petitioner Pawan at her parent's house on 11.4.1995 and since then she has been residing at her parent's house along with her two children. She further stated that the petitioner is a transport agent and earning Rs. 6000/- to Rs. 7000/- per month. She also stated that earlier she filed a petition for maintenance and during pendency of the petition for maintenance, the matter was compromised and she started living with the petitioner. However, the petitioner again turned out the non-petitioner of

her matrimonial home and failed to maintain her.

The petitioner filed a reply to the petition contending that in the year 1990 he surrendered the transport agent licence and thereafter has been doing some work, however, about income nothing has been stated.

Before the trial court, non-petitioner herself appeared and produced her father Om Prakash and brother Jai Prakash. The petitioner himself appeared as NAW-1 and produced NAW-2 Rajendra, NAW-3 Shanti and NAW-4 Sushimta. Certain documents were also produced by the parties.

The non-petitioner in her statement stated that on 20.2.1981 the marriage between her and the petitioner was solemnized. From the wedlock, she gave birth to as many as four issues. The petitioner right from the beginning was not treating her properly and used to given her beating. Thereafter, after giving birth to three issues, the petitioner left her with her parents and she started living with her parents. Earlier also, she filed a case for maintenance which was compromised between the parties. In that case also, the court granted maintenance in her favour at the rate of Rs. 350/- per month and in favour of Kumari Shital at the rate of Rs. 150/- per month. However,

subsequently, when the compromise entered into between the parties, she started living with the petitioner with effect from 31.3.1992. The petitioner demanded a sum of Rs. 60,000/- from her father. On 7.8.94 she was assaulted by the petitioner and his parents. At that time, she also came to know that the petitioner is having relation with some other lady namely Basanti who is widow. She further stated that even on 31.3.1995, she was assaulted by the petitioner. When she came back to her parent's house, her mother-in-law came there and took two children and thereafter she has been residing at her parent's house. She gave birth to a child namely Pawan the non-petitioner No.3. She stated that she has no source of income, whereas the petitioner is transport agent as also having a mine and is earning Rs. 15,000/- per month. Her testimony could not be shaken in the cross-examination.

Similar is the statement of Jai Prakash and Om Prakash. Om Prakash stated that in the year 1995, the petitioner turned out his daughter from the matrimonial home and sent her to Jodhpur in a bus. He also stated that the non-petitioner gave birth to a son namely Pawan non-petitioner No.3 at her parent's house. He stated that the petitioner has kept one another woman which was objected by his daughter on which the petitioner used to assault the non-petitioner and turned out

her from matrimonial home. He has named the lady which the petitioner has kept. He also stated that the petitioner is transport agent and also having mine and earning at least Rs. 8000/- to 10,000/- per month. He further stated that non-petitioner has no source of income and he being the father of the non-petitioner No.1 is maintaining the non-petitioner and her children. In the earlier proceeding for maintenance, a compromise was entered into because he himself is enable to maintain his daughter and her children. At that time, the petitioner agreed to pay maintenance at the rate of Rs. 500/- per month; however, did not pay the same. He categorically stated that the petitioner has kept one woman namely Basanti as wife in the house. He has exhibited a postcard Ex.1.

NAW-1 Anil Kumar, the petitioner, stated that there was some quarrel between him and his landlord and therefore, the non-petitioner No.1 was sent to her parent's house. He admitted that after giving birth to non-petitioner No.3 Pawan, the non-petitioner No.1 sent a message to him that she would come to in-laws house which he did not agree on the ground that there was some dispute between him and his landlord at Beawar and therefore, by a telegram he informed her not to come. Thereafter, there were number of telegrams from the father of the non-petitioner No.1 saying that he is sending the non-

petitioner No.1 to Beawar which he objected and stated that he would not be available and not to send her at Beawar. The other witnesses Rajendra and Shanti in any manner did not support the case of the petitioner.

From the statement of the petitioner himself, it is clear that the petitioner somehow or the other avoiding the non-petitioner and on one pretext or the other sending the non-petitioner to her house and whenever non-petitioner wanted to come to her in-laws house to live with the petitioner, the petitioner avoided and asked her not to come. This clearly goes to show that the petitioner has failed to maintain the non-petitioners and neglected them.

The trial court on proper and sound appreciation of the evidence came to the conclusion that it was not the non-petitioner No.1 who deserted the petitioner without reasonable cause but it was the petitioner who compelled the non-petitioner to leave the matrimonial home and failed to maintain her and awarded the maintenance as noticed above.

On close scrutiny of the statement of witnesses, in my view, the conclusion arrived at by the trial court is based on sound and proper appreciation of the evidence warranting no

interference. In the circumstances,therefore, I do not find any error, illegality or perversity in the order impugned warranting interference in the revisional jurisdiction.

The revision petition has no merit and is accordingly dismissed.

(H.R.PANWAR),J.

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